

ATTACHMENT D

DOCKET NO. 36176

IN THE MATTER OF THE PETITION OF §
 INTRADO, INC. FOR ARBITRATION §
 PURSUANT TO SECTION 252(b) OF THE §
 COMMUNICATIONS ACT OF 1934, AS §
 AMENDED, TO ESTABLISH AN §
 INTERCONNECTION AGREEMENT §
 WITH SOUTHWESTERN BELL §
 TELEPHONE COMPANY D/B/A AT&T §
 TEXAS §

PUBLIC UTILITY COMMISSION
OF TEXAS

RECEIVED
 10 MAY 27 PM 4:23
 PUBLIC UTILITY COMMISSION
 CLERK

ORDER NO. 18**DOCKET NO. 36185**

IN THE MATTER OF THE PETITION OF §
 INTRADO, INC. FOR ARBITRATION §
 PURSUANT TO SECTION 252(b) OF THE §
 COMMUNICATIONS ACT OF 1934, AS §
 AMENDED, TO ESTABLISH AN §
 INTERCONNECTION AGREEMENT §
 WITH GTE SOUTHWESTERN §
 INCORPORATED, D/B/A VERIZON §
 SOUTHWEST §

PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER NO. 13

**CONSOLIDATING ISSUES, WITHDRAWING REQUEST FOR DEMONSTRATION,
 AND SCHEDULING A PREHEARING CONFERENCE**

I. Consolidation of Issues

During the May 13, 2010 joint telephonic prehearing conference in these dockets, Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T) and GTE Southwest, Inc., d/b/a Verizon Southwest (Verizon) requested consolidation of these dockets for the limited purpose of addressing Threshold Issue No. 1.¹ On May 18, 2010, Docket No. 36176, Order No. 15 and Docket No. 36185, Order No. 12 memorialized the May 13, 2010 prehearing conference and ordered Intrado Communications, Inc. (Intrado) to file a letter by noon on Thursday, May

¹ Prehearing Conference Tr. at 19 (May 13, 2010).

DOCKET NO. 36176
DOCKET NO. 36185

ORDER NO. 18
ORDER NO. 13

PAGE 2 OF 6

20, 2010, stating whether it agrees with the consolidation of these two dockets for the resolution of Threshold Issue No. 1 and any related motions.²

On May 20, 2010, Intrado filed a letter in both dockets stating that it did not object to consolidation of the proceedings for the limited purposes of: 1) a joint hearing on Threshold Issue No. 1; 2) issuance of a decision on Threshold Issue No. 1; and 3) any subsequent motions related thereto.³ Intrado did however, object to consolidation for any other purposes.⁴

Pursuant to P.U.C. PROC. R. 21.73(b), Threshold Issue No. 1 in Docket Nos. 36176 and 36185 are consolidated. Therefore, these dockets are consolidated for the limited purposes of: 1) a joint hearing on Threshold Issue No. 1; 2) issuance of a decision on Threshold Issue No. 1; and 3) any subsequent motions related thereto. There will be one evidentiary record for the hearing on the merits on Threshold Issue No. 1 and the Arbitrators will issue one decision on Threshold Issue No. 1. Henceforth, all filings relating to the consolidated portions of the two dockets shall be filed in both dockets and shall be served on parties in both dockets, and the Arbitrators will file their decision in both dockets. The prefiled testimony and discovery that has already been submitted should not be re-filed in both dockets. Should any additional prefiled testimony or discovery need to be filed, it should be filed only in the original docket. These filings shall be styled as follows:

DOCKET NO. 36176

IN THE MATTER OF THE PETITION OF	§	PUBLIC UTILITY COMMISSION
INTRADO, INC. FOR ARBITRATION	§	
PURSUANT TO SECTION 252(b) OF THE	§	OF TEXAS
COMMUNICATIONS ACT OF 1934, AS	§	
AMENDED, TO ESTABLISH AN	§	
INTERCONNECTION AGREEMENT WITH	§	
SOUTHWESTERN BELL TELEPHONE	§	
COMPANY D/B/A AT&T TEXAS	§	
	§	

DOCKET NO. 36185

² Docket No. 36176, Order No. 15 at 2 (May 18, 2010).

³ Docket No. 36176, Letter at 1-2; Docket No. 36185, Letter at 1-2 (May 21, 2010).

⁴ *Id.*

DOCKET NO. 36176
DOCKET NO. 36185

ORDER NO. 18
ORDER NO. 13

PAGE 3 OF 6

IN THE MATTER OF THE PETITION OF	§	PUBLIC UTILITY COMMISSION
INTRADO, INC. FOR ARBITRATION	§	
PURSUANT TO SECTION 252(b) OF THE	§	OF TEXAS
COMMUNICATIONS ACT OF 1934, AS	§	
AMENDED, TO ESTABLISH AN	§	
INTERCONNECTION AGREEMENT WITH	§	
GTE SOUTHWESTERN INCORPORATED,	§	
D/B/A VERIZON SOUTHWEST	§	

In all other aspects, the dockets shall be separately maintained.

II. Cancelling Requested Demonstration

During the May 11, 2010 joint telephonic prehearing conference in Docket Nos. 36176 and 36185, the Arbitrators stated that they wanted to discuss the feasibility of a site visit to see a demonstration of Intrado's service as it will operate in Texas.⁵ On May 18, Order No. 15 in Docket No. 36176 and Order No. 12 in Docket No. 36185, ordered the parties to discuss the logistics for a demonstration of Intrado's service with certain guidelines and required the parties to file a status requirement by Tuesday, May 25, 2010.⁶ On May 18, 2010, Intrado filed its objections and response to the Arbitrators' request to conduct a site visit.⁷ Intrado stated that over its objections, it could provide a simulated demonstration of its services to be provided in Texas.⁸ Intrado claims the demonstration requested by the Arbitrators serves little purpose in determining whether Intrado's 911 services fall within the definition of "telephone exchange service" as set forth in the federal Telecommunications Act and as implemented by the Federal Communications Commission (FCC).⁹ Intrado states that the Arbitrators are improperly

⁵ Prehearing Conference Tr. at 4 (May 11, 2010).

⁶ Docket No. 36176, Order No. 15 at 2 (May 15, 2010); Docket No. 36185, Order No. 12 at 2 (May 15, 2010).

⁷ Intrado Communications Inc. Objections and Response to Arbitrators' Request to Conduct a Site Visit (May 18, 2010) (Intrado Objections).

⁸ *Id.* at 7-8.

⁹ *Id.* at 2.

DOCKET NO. 36176
DOCKET NO. 36185

ORDER NO. 18
ORDER NO. 13

PAGE 4 OF 6

advising Intrado on how it must prove-up its evidence.¹⁰ Additionally, Intrado states that the Arbitrators' request for a site visit is discriminatory and prejudicial.¹¹

On May 25, 2010, AT&T filed its response to Intrado's objections to the Arbitrators' request to conduct a site visit.¹² AT&T states that Intrado's objections are baseless and that the Arbitrators clearly have the discretion to order a site visit.¹³ AT&T states that there is nothing discriminatory or anticompetitive about requiring a party who has requested arbitration under Section 251(c) of the Federal Telecommunications Act to provide evidence or "additional information as needed to fully develop the record of the proceeding."¹⁴ AT&T states that it has been required to produce additional evidence and been required to provide site visits in the past.¹⁵

On May 25, 2010, Verizon responded to Intrado's Objections.¹⁶ Although Intrado did not file its Objections in Docket No. 36185; the discussion of a site visit was initiated by the Arbitrators in the May 11, 2010 joint prehearing conference and Verizon states it has a direct interest in the issues raised by Intrado in its Objections.¹⁷ Therefore, Verizon is entitled to respond to Intrado's Objections. Verizon states that requiring Intrado to provide additional evidence does not violate any of Intrado's due process rights and that there is no basis for Intrado's claim of discrimination or the various restrictions it proposes to impose on the video-taped demonstration.¹⁸

On May 26, 2010, Intrado filed the required status report in both proceedings.¹⁹ Intrado reported that it hosted a conference call with AT&T and Verizon in which Intrado laid out how it intends to conduct the demonstration.²⁰ The remainder of the status report details the types of

¹⁰ *Id.* at 3.

¹¹ *Id.* at 4-5.

¹² AT&T Texas' Response to Intrado's Objections and Response to Arbitrators' Request to Conduct a Site Visit (May 25, 2010) (AT&T Response).

¹³ *Id.* at 2.

¹⁴ *Id.* (citing to P.U.C. Proc. R. 21.95(q)).

¹⁵ *Id.* at 3.

¹⁶ Verizon Southwest's Response to Intrado Communications Inc.'s Objections and response to Arbitrators' Request to Conduct a Site Visit (May 25, 2010) (Verizon Response).

¹⁷ *Id.* at 1.

¹⁸ *Id.* at 2.

¹⁹ Intrado Communications Response to May 18, 2010 Order, Status Report Regarding Demonstration of Services (May 26, 2010).

²⁰ *Id.* at 1-2.

DOCKET NO. 36176
DOCKET NO. 36185

ORDER NO. 18
ORDER NO. 13

PAGE 5 OF 6

calls that would be demonstrated, who would be permitted to attend, how the demonstration would be conducted, the timing for the demonstration, additional information that is needed, and further proceedings that need to be discussed.²¹

On May 26, 2010, AT&T filed a response to Intrado's status report.²² AT&T says it could not join Intrado's status report because too many questions remain unanswered.²³ AT&T goes on to say that Intrado seeks to prevent AT&T from attending the demonstration with representatives of its choice,²⁴ that certain information about the demonstration should be provided in advance to all parties,²⁵ that Intrado is improperly requiring AT&T to provide the local telephone numbers that will be called during the simulation in advance of the simulation,²⁶ and that both parties should be permitted to file additional testimony and rebuttal after the demonstration.²⁷

On May 27, 2010, Verizon filed a response to Intrado's status report.²⁸ Verizon states that the "demonstration" Intrado intends to videotape would be merely a simulation that does not necessarily resemble "its service *as it would operate in Texas*."²⁹ Verizon also claims that some of the restrictions proposed by Intrado run counter to due process principles.³⁰

Based on the continued objections of Intrado to providing a demonstration on how its 911 services would operate in Texas, the assertions of both AT&T and Verizon that they see little value in a videotaped simulated demonstration,³¹ especially with the limitations proposed by Intrado, and the potential for significant delay in a hearing on Threshold Issue No. 1, the Arbitrators withdraw their request at this time for a site visit or demonstration of Intrado's 911 service as it will operate in Texas. However, the arbitrators may raise this issue again at a later date.

²¹ *Id.* at 2-4.

²² Letter to Arbitrators Kayser and Goodson Re: Intrado's Status Report (May 26, 2010).

²³ *Id.* at 1.

²⁴ *Id.* at 1-2.

²⁵ *Id.* at 2.

²⁶ *Id.*

²⁷ *Id.* at 3.

²⁸ Letter to Arbitrators Kayser & Goodson Re: Response to Status Report (May 27, 2010).

²⁹ *Id.* at 1.

³⁰ *Id.*

³¹ AT&T Response at 3-5; Verizon Response at 2, 5-6.

DOCKET NO. 36176
DOCKET NO. 36185

ORDER NO. 18
ORDER NO. 13

PAGE 6 OF 6

III. Scheduling a Prehearing Conference

The Arbitrators will conduct a joint prehearing conference on Tuesday, June 1, 2010, from 10:00 to 11:00 a.m. CST, in Hearing Room Gee at the Commission's offices to discuss the procedural schedule and hearing for resolution of Threshold Issue No. 1. The Parties shall provide a proposed procedural schedule consisting of proposed hearing dates and deadlines for post-hearing initial and reply briefs and shall be prepared to discuss their preferences for the format of the hearing. If any of the parties would like to participate via conference call, they are asked to provide a conference bridge by email by the close of business Friday, May 28, 2010.

SIGNED AT AUSTIN, TEXAS the 27th day of May 2010

PUBLIC UTILITY COMMISSION OF TEXAS



SUSAN E. GOODSON, ARBITRATOR



LIZ KAYSER, ARBITRATOR